IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

WP(C).No. 33519 of 2004(M)

OS.72/1998 of PRL.M.C.,KANNUR
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PETITIONER:

P.BALAN NAIR, S/O.RAMAN NAIR,
AGED 57 YEARS, PROPRIETOR, KVR COMPLEX,
NEAR MAHATMA MANDIR, KANNUR.

BY ADV. SRI.A.MOHAMED MUSTAQUE

RESPONDENT:

M/S.JYOTHI ENTERPRISES,
S.P.C.A.BUILDING, KANNUR-2, REP. BY ITS
MANAGING PARTNER SRI. P.K.JAYAKUMAR,
S/O.KUMARAN, AGED 47 YEARS, S.P.C.A. BUILDING,
JYOTHI ENTERPRISES, KANNUR.

BY ADV. SRI.P.V.SURENDRANATH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.33519/2004 M

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PLAINT IN O.S.NO.72/98 OF THE MUNSIFF COURT, KANNUR.**

EXT.P2: **COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER.**

EXT.P3: **COPY OF THE AFFIDAVIT FILED ALONG WITH I.A.NO.3436/2000.**

EXT.P4: **COPY OF THE AFFIDAVIT FILED ALONG WITH I.A.NO.3487/2000.**

EXT.P5: **COPY OF THE COUNTER STATEMENT FILED BY THE PETITIONER.**

EXT.P6: **COPY OF THE COMMON ORDER IN I.A.NOS.3486/2000 AND 3487/2000 IN O.S.MO.72/98 ON THE FILE OF THE MUNSIFF, KANNUR.**

EXT.P7: **COPY OF THE ORDER IN CRP.NO.3112/2000 DTD. 24/09/2004 BEFORE THIS HON'BLE COURT.**

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 33519 of 2004

Dated this the 4th day of June, 2007

JUDGMENT

Ext.P6 common order by which the learned Munsiff allowed an application for substitution of the plaintiff and for impleadment of an additional plaintiff is under challenge in this proceedings under Article 227 of the Constitution by the defendant. The suit originally was instituted by a partnership firm by name "Jyothi Enterprises, S.P.C.A. Building, Kannur", represented by its Managing Partner Sri.P.K.Jayakumar. Obviously the suit is instituted as though M/s.Jyothi Enterprises is a registered partnership firm and the signatory to the plaint Mr.P.K.Jayakumar,its Managing Partner is competent to represent the firm and to sign and verify the pleadings on behalf of the firm. A contention was raised by the defendant that the suit is not maintainable in view of Section 69 (2) of the Partnership Act. Issues were formulated on the basis of that contention and the

suit was listed for trial. At that late juncture, it appears wisdom dawned on the plaintiff who realized that it will be difficult to maintain the plaint since the position was obvious that Jyothi Enterprises was not a registered firm. He therefore filed I.A.3486/2000 for substitution of the original plaintiff by its Manging Partner K.Jayakumar and for impleadment of an additional plaitniff K.V.Reena, another partner of the unregistered firm. I.A.No.3487/2000 was also filed for consequential amendment. The learned Munsiff allowed both the applications on condition that the petitioner pays a sum of Rs.150/-.

2. Mr.M.K.Sumod, learned counsel for the petitioner has addressed me elaborately. Mr.Sumod referred to the judgment of the Supreme Court in **Loonakaran Sethia v. Ivan E.John (AIR 1977 S.C.336)** and another decision of the Supreme Court in **M/s.Shreeram Finance Corporation v. Yasin Khan (AIR 1989 S.C.1769)**. Learned counsel also referred to the judgment of K.S.Parippornan,J as judge of this court in **Bharath Trust v. D.Divakra Rao (1992 (2) KLJ 661)** and submitted that applying the ratio which emerged from these decisions, it will have to be found that the suit as instituted originally was not

maintainable in law. In a suit which is not maintainable in law, amendment so as to render it maintainable will cause legal prejudice to the respondent. If the amendment enables the plaintiff to maintain a suit which was liable to be dismissed as not maintainable, such amendment ought not to have been allowed notwithstanding the trend of liberality noticed in various decisions governing Order VI Rule 17 C.P.C.

3. All the submissions of Sri.Sumod were resisted by Sri.P.V.Surendranath, the learned counsel for the respondent, who submitted that there is no warrant at all for interfering with Ext.P6 order having regard to the non parameter of exercising supervisory jurisdiction of this court under Article 227 of the Constitution.

4. Notwithstanding the submissions of Sri.Sumod, I am of the view that this court will not be justified in interfering with Ext.P6 under the supervisory jurisdiction under Article 227 except to the limited extent of imposing a condition that the respondent shall pay to the petitioner through its counsel in this court total sum of Rs.1,500/- as cost for allowing I.A Nos.3486/2000 and 3487/2000. The amendment allowed in substance only enables

the plaintiff to correct misdescription of the plaintiff and is permissible under the law relating to amendment/substitution of parties.

Accordingly, Ext.P6 is modified to the extent of incorporating a condition that the respondent shall pay to the petitioner through their counsel in this court a sum of Rs.1,500/- (Rupees One Thousand Five Hundred) as cost within three weeks of receiving a copy of this judgment. Failing such payment, both the I.As will stand dismissed. Et.P6 will stand vacate and both the I.As will stand dismissed.

This Writ Petition is disposed of as above.

PIUS C. KURIAKOSE,
JUDGE.

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